

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEMETRIUS EDWARD JOSEPH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47447

FILED

SEP 25 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion to vacate or correct an illegal sentence. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

On June 21, 2002, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted robbery and one count of attempted first degree kidnapping. The district court sentenced appellant to serve a term of 16 to 72 months in the Nevada State Prison for the attempted robbery count and a concurrent term of 84 to 210 months for the attempted kidnapping count. This court affirmed appellant's judgment of conviction on direct appeal.¹ Appellant unsuccessfully sought post-conviction relief by way of a post-conviction petition for a writ of habeas corpus.²

On May 3, 2006, appellant filed a proper person motion to vacate or correct an illegal sentence in the district court. The State

¹Joseph v. State, Docket No. 39968 (Order of Affirmance, December 9, 2002).

²Joseph v. State, Docket No. 41367 (Order of Affirmance, May 5, 2004).

opposed the motion. On June 1, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant appeared to claim that the criminal information was defective because the State did not indicate what theory of liability it was proceeding under.

A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum.³ "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'"⁴

Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant's claim fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence; appellant may not challenge the validity of his guilty plea in the instant motion. Appellant's sentence was facially legal, and appellant failed to demonstrate that the district court was not a court of competent jurisdiction.⁵ Therefore, we affirm the order of the district court.


³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

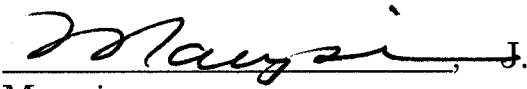
⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

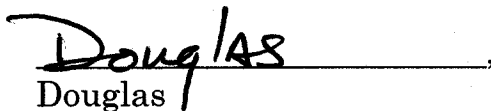
⁵See NRS 193.330; NRS 200.380; NRS 200.320.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Valorie Vega, District Judge
Demetrius Edward Joseph
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁷We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.